

REMARKS

Applicants respectfully request reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 20-23.

The following claims are *independent*: 20 and 21.

The following claims have previously been *cancelled* without prejudice or disclaimer: 1-19 and 24-37.

Please *add* claims 38 and 39. Please *amend* claims 20 and 21; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices, Applicants submit that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicants submit that these new claims and/or claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Claim Rejections - 35 U.S.C. § 101

The Office Action has rejected claims 20-23 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants respectfully traverse this rejection. Applicants submit that there is no test for non-statutory subject matter that subjectively precludes the aforementioned claims. MPEP § 2106, Section IV, states "claims directed to nothing more than abstract ideas (such as mathematical algorithms), natural phenomena, and laws of nature are not eligible for patent protection." MPEP § 2106 also discusses "[w]hile abstract ideas, natural phenomena, and laws of nature are not eligible for

patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be."

Applicants submit that the elements recited in the claims are, in fact, directed to statutory subject matter and do not fall within the recognized Judicial Exceptions as merely abstract ideas (such as mathematical algorithms), natural phenomena, and/or laws of nature. Though Applicant respectfully traverses the Examiner's rejection and reserves the right to argue patentability of the claims in their original form at a later time, Applicant has amended independent claims 20 and 21 to provide clarification and/or to better track business practices. Claim 20 is a: "A processor implemented method" and recites "displaying via a processor. . . receiving, via the processor, a user defined selection, . . . providing via the processor. . . displaying via the processor. . . " Amended claim 21 recites, inter alia, "A processor implemented method" and recites "displaying via a processor. . . receiving, via the processor, a user defined selection, . . . providing via the processor. . . displaying via the processor. . . " Applicants submit claims 22 and 23, which depend directly or indirectly from independent claim 21, are directed to statutory subject matter for at least the reasons discussed above. Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner provide specific explanation describing how claims 20 and 21 are allegedly directed to non-statutory subject matter. Accordingly, for at least these reasons, Applicant submits that claims 20-23 are directed to statutory subject matter and withdrawal of this ground of rejections is requested.

Claim Rejections - 35 U.S.C. § 103

The Office Action rejected claims 20-23 under 35 U.S.C. § 103(a) as being unpatentable over Himmelstein, US Pub. No. 2002/0038278 (hereinafter "Himmelstein"), and in further view of Russo, US Pub. No. 2004/068458 (hereinafter "Russo"). Applicants respectfully traverse the rejections and

submit that a *prima facie* showing of obviousness has not been made and that the applied references, taken alone or in combination, fail to discuss or render obvious every element of each pending claim.

MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (i) the relevant teachings of the prior art relied upon,
- (ii) the differences in the claim over the applied references,
- (iii) the proposed modification of the applied references to arrive at the claimed subject matter, and
- (iv) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

Applicants respectfully submit that the Examiner has failed to establish at least the first two requirements for a *prima facie* case of obviousness - the relevant teachings of the prior art relied on and the differences in the claims over the applied references.

Independent claim 20 recites *inter alia*:

A processor implemented method comprising

displaying via a processor on a display screen of a computer a first order destination menu at times when a first financial instrument trading symbol is displayed in an order input area of a user interface, received and processed to determine the first order destination menu listing only order destination alternatives that correspond to order destinations that support trading in a first financial instrument that corresponds to the first financial instrument trading symbol;

receiving via the processor a user defined selection of one or more alternatives from said first order type menu;

providing via the processor the selection to determine a selection of at least one alternative to be displayed as part of a second order type menu; . . .

Applicants submit that the cited references do not discuss or render obvious at least these elements of independent claim 20.

The Examiner states that Himmelstein, discusses "displaying on a display screen of a computer a first order type menu at times when a first order destination alternative is selected from an order destination menu . . ." (Office Action, page 3) and alleges Himmelstein renders the claim language obvious. Applicants traverse and submit that Himmelstein does not disclose the claimed ". . . displaying . . . a first order type menu at times . . . [and] receiving via the processor a user defined selection of an order type alternative from said first order type menu; providing via the processor the selection to determine a selection of at least one order type alternatives to be displayed as part of a second order type menu; and displaying . . . a second order type menu. . ." as recited by claim 20.

Instead of the Examiner's alleged "first order type menu" and "second order type menu," Himmelstein discusses a "bartering system [that] implements barter between a plurality of parties each having one or more classes of items available for barter." (Himmelstein, abstract). Himmelstein discusses that a "barter website is accessed via an online stock trading company that limits bartering to stocks, Himmelstein Options for stock, cash, web barter dollars and combinations thereof." (Himmelstein, page 5 para. 50) (See Himmelstein's process flows illustrated in Figures 4 and 5.) More specifically, Himmelstein states "the website displays all of the barterer's stock, Himmelstein Options for stock, web barter dollars and cash available for barter. . . the barterer selects from the displayed items. . . ." (Himmelstein page 5, para. 51). Applicants submit Himmelstein's various purchase currencies are different from the claimed "first order type menu" and "second order type menu," as the menu options in Himmelstein (See Himmelstein Fig. 5A) are displayed and remain static when in use. Further, Applicants submit the selection of one of the various items for barter is not used to populate other menu options. Instead, Himmelstein's system "displays all of the barterer's stock, Himmelstein Options for

stock, web barter dollars, and cash available for barter . . . the barterer selects from the displayed items. . ." (Himmelstein para [0050]). Applicants submit Himmelstein's discussion of a menu population using user selected currencies, does not render obvious at least the claimed ". . . receiving via the processor a user defined selection of an order type alternative from said first order type menu; providing via the processor the selection to determine a selection of at least one order type alternatives to be displayed as part of a second order type menu; . . . " as recited by amended independent claim 20. Should the Examiner disagree, Applicants respectfully request further clarification as to how Himmelstein's simple menu population allegedly renders obvious the claimed elements as recited by amended independent claim 20.

Applicants further submit that Russo fails to remedy the deficiencies identified above in Himmelstein with regard to independent claim 20. Instead of the claimed ". . . receiving via the processor a user defined selection of an order type alternative from said first order type menu; providing via the processor the selection to determine a selection of at least one order type alternatives to be displayed as part of a second order type menu; . . . " of claim 20, Russo discusses "Three U.S. Stock Exchanges, the NYSE, the NASDAQ and the AMEX embedded within Six types of Stock Market Ticker Tape Formatted Displays along with Twenty three Multiple catagory, [sic] Three Second Formatted Displays depicting around the clock, live, real time, Eastern time and reiterated dormant, world-wide economic data onto the viewing screen of a mobile, hand-held, wireless device that is small enough to fit into the 'user' of the machine's pocket" (Russo, abstract). As such, Applicants submit Russo's display of data that includes "around the clock access to the daily listings of company stock symbols listed with the Three U.S. Stock Exchanges" (Russo, para. 0001) does not remedy the deficiencies in Himmelstein discussed above or render obvious the claimed elements Should the Examiner disagree,

Applicants respectfully request further clarification as to how Russo's displayed data allegedly renders obvious the features explicitly recited in independent claim 20.

Although of different scope than claim 20, Applicants submit that claim 21 is patentable over Himmelstein in view of Russo, taken alone or in combination, for at least similar reasons as discussed above identifying deficiencies in the applied references with regard to independent claim 20. For example, independent claim 21 recites, *inter alia*, ". . . receiving via the processor a user defined selection of an order type alternative from said first order type menu; providing via the processor the selection to determine a selection of at least one order type alternatives to be displayed as part of a second order type menu; . . . " Applicants respectfully submit that at least these claim elements from independent claim 21 are not discussed or rendered obvious by Himmelstein, or Russo taken alone or in combination. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejection.

Furthermore, Applicants submit that claims 22 and 23, which depend directly or indirectly from independent claim 21 are also not discussed or rendered obvious by Himmelstein or Russo taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to the independent claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejection.

CONCLUSION

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicants respectfully submit that the supporting remarks and claimed inventions, claims 20-23, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements and/or bases for rejection were not discussed as they have been rendered moot based on the above amendments and/or remarks, Applicants assert that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art and reserves the opportunity to more particularly traverse, remark and distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to an Office Action objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Office Action objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s).

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicants hereby authorize and request that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-452. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicants request that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicants hereby authorize and request that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-452.

In the event that a telephone conference would facilitate examination of the application in any way, Applicants invite the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
CHADBOURNE & PARKE LLP

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By: Walter G. Hanchuk/

Walter G. Hanchuk

Registration No.: 35,179

Correspondence Address:

CHADBOURNE & PARKE LLP
30 Rockefeller Plaza
New York, NY 10112

212-408-5100 (Telephone)
212-541-5369 (Facsimile)
patents@chadbournel.com (E-mail)